

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2013-524**

11 **ERIN M. FERIOLI**
12 **201 Bonnie Lane**
13 **Hollister, CA 95023**

ACCUSATION

14 **Registered Nursing License No. 623005**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs

22 .2. On or about July 30, 2003, the Board of Registered Nursing issued Registered
23 Nursing License Number 623005 to Erin M. Ferioli (Respondent). The Registered Nursing
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on July 31, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
3 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
5 Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
8 licensee or to render a decision imposing discipline on the license.

9 6. Section 118, subdivision (b), of the Code provides that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
11 within which the license may be renewed, restored, reissued or reinstated.

12 RELEVANT STATUTES AND REGULATIONS

13 7. Section 2761 of the Code states:

14 "The board may take disciplinary action against a certified or licensed nurse or deny an
15 application for a certificate or license for any of the following:

16 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

17 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
18 functions.

19 ..."

20 8. Section 2762 of the Code states:

21 "In addition to other acts constituting unprofessional conduct within the meaning of this
22 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
23 chapter to do any of the following:

24 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
25 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
26 administer to another, any controlled substance as defined in Division 10 (commencing with
27 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
28 defined in Section 4022.

1 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
2 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
3 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
4 himself or herself, any other person, or the public or to the extent that such use impairs his or her
5 ability to conduct with safety to the public the practice authorized by his or her license.

6 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
7 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
8 or the possession of, or falsification of a record pertaining to, the substances described in
9 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
10 thereof.

11 "(d) Be committed or confined by a court of competent jurisdiction for intemperate use of
12 or addiction to the use of any of the substances described in subdivisions (a) and (b) of this
13 section, in which event the court order of commitment or confinement is prima facie evidence of
14 such commitment or confinement.

15 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
16 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
17 section."

18 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
19 revoke a license on the ground that the licensee has been convicted of a crime substantially
20 related to the qualifications, functions, or duties of the business or profession for which the
21 license was issued.

22 10. California Code of Regulations, title 16, section 1442, states:

23 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
24 the standard of care which, under similar circumstances, would have ordinarily been exercised by
25 a competent registered nurse. Such an extreme departure means the repeated failure to provide
26 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
27 situation which the nurse knew, or should have known, could have jeopardized the client's health
28 or life."

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11. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

12. Code section 4060 provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

13. Health and Safety Code section 11173(a) states, in pertinent part, that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation or subterfuge.

14. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

15. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance in Schedule II, subdivision (d), without a prescription.

16. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized licensee.

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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1 DRUGS

2 18. Ativan is a brand of lorazepam, a Schedule IV controlled substance as designated by
3 Health and Safety Code section 11057(d)(16) and is a dangerous drug per Code section 4022. It
4 is a benzodiazepine, muscle relaxant and anti-convulsant.

5 19. Morphine is a Schedule II controlled substance as designated by Health and Safety
6 Code section 11055(b)(1)(L), and a dangerous drug as designated by Business and Professions
7 Code section 4022. It is used to treat moderate to severe pain.

8 FACTUAL BACKGROUND

9 20. Respondent was employed as a registered nurse at Valley Presbyterian Hospital
10 (VPH) in Van Nuys, California at all relevant times described herein. On or about February 2,
11 2011, the VPH Director of Critical Care Services discovered that the hospital's Omnicell¹ system
12 indicated that Respondent had withdrawn Ativan and Morphine without documenting
13 administration of the medications. On or about February 3, 2011, Respondent met with the VPH
14 Director of Critical Care Services and HR Manager. During that meeting, Respondent admitted
15 that she had failed to document administration of Ativan and Morphine. Respondent refused to
16 take a drug test on that date. On February 4, 2011, Respondent took a drug test with negative
17 results.

18 21. On or about February 11, 2011, Respondent reported to VPH for a 7:00 p.m. to 7:00
19 a.m. shift. During her shift, Respondent withdrew Ativan and Morphine from the hospital's
20 Omnicell under another nurse's user name. Respondent took an I.V. starter kit and saline from
21 the hospital utility room, and went into a patient's private bathroom. Respondent emerged from
22 the bathroom approximately 15 minutes later with a dressing on her forehead and blood on her
23 scrubs. Respondent's gait was unsteady and she was not coherent. Respondent gave report to
24 another nurse, but provided incorrect information about the patient. A bloody syringe, needle,
25 wrapping and tourniquet were found in the bathroom in the toilet, and there were blood drops on
26 the floor, sink and wall. Respondent could not explain how she injured her forehead.

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28 ¹ Omnicell is a computerized hospital medication administration system.

1 22. On or about February 16, 2011, Respondent met with the VPH Director of Critical
2 Care Services, and admitted that she "had a problem" and had diverted and used the Ativan and
3 Morphine. Respondent further admitted that she delayed taking the drug test that was requested
4 on February 3, 2011 until February 4, 2011, because she wanted the drugs to be out of her system.

5 FIRST CAUSE FOR DISCIPLINE

6 (ILLEGALLY OBTAIN OR POSSESS CONTROLLED SUBSTANCES)

7 23. Respondent is subject to disciplinary action under Code sections 2762(a) and 4060,
8 Health and Safety Code section 11377 and Health and Safety Code section 11173(a), in that while
9 on duty as a registered nurse at VPH, she illegally obtained and possessed Ativan and Morphine
10 as described above in paragraphs 20, 21 and 22.

11 SECOND CAUSE FOR DISCIPLINE

12 (DANGEROUS USE OF NARCOTICS)

13 24. Respondent is subject to disciplinary action under section 2762(b), Health and Safety
14 Code section 11550 and Health and Safety Code section 11170 in that she diverted and used
15 narcotics to an extent dangerous to herself and others, as alleged above in paragraphs 21 and 22.

16 THIRD CAUSE FOR DISCIPLINE

17 (FALSIFY, OR MAKE GROSSLY INCORRECT, GROSSLY INCONSISTENT, OR
18 UNINTELLIGIBLE ENTRIES IN ANY PATIENT RECORD)

19 25. Respondent is subject to disciplinary action under Code section 2762(e), in that while
20 on duty as a registered nurse at VPH, Respondent falsified, made grossly incorrect, grossly
21 inconsistent, or unintelligible entries in hospital and patient records, as alleged above in paragraph
22 20.

23 FOURTH CAUSE FOR DISCIPLINE

24 (GROSS NEGLIGENCE)

25 Respondent is subject to disciplinary action under section 2761(a)(1) in that she was
26 grossly negligent as alleged above in paragraphs 20, 21 and 22.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (INCOMPETENCE)

3 Respondent is subject to disciplinary action under section 2761(a)(1) in that she was
4 incompetent as alleged above in paragraphs 20, 21 and 22.

5 SIXTH CAUSE FOR DISCIPLINE

6 (UNPROFESSIONAL CONDUCT)

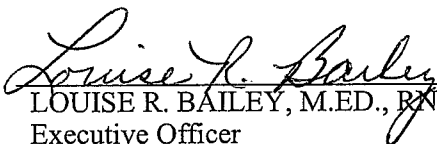
7 Respondent is subject to disciplinary action under section 2761(a) in that she acted
8 unprofessionally as alleged above in paragraphs 20, 21 and 22.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:

- 12 1. Revoking or suspending Registered Nursing License Number 623005, issued to Erin
13 M. Ferioli;
- 14 2. Ordering Erin M. Ferioli to pay the Board of Registered Nursing the reasonable costs
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.
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20 DATED: December 24, 2012


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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